

Internal Revenue Service

Department of the Treasury
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November 19, 2012

LEGEND

Trust 1 =
EIN:

Trust 2 =
EIN:

Settlor =

A =
SSN:

B =
SSN:

Dear :

This responds to Trust 1's and Trust 2's request dated July 3, 2012 for rulings about whether certain proposed trust modifications result in gain or loss under §§ 61 and 1001 of the Internal Revenue Code. You are the trustee of Trust 1 and Trust 2.

FACTS

Settlor formed Trust 1 and Trust 2 in 19 and 19 . Each Trust is irrevocable and provides for current discretionary distributions to § 501(c)(3) charitable organizations. The discretion of the Trustee is total, both as to choice of charitable beneficiary and as to amount of distribution.

Article VI-A of each trust provides that the trustee has sole and absolute discretion to effect distributions of Trust corpus and/or income to any one or more of the Beneficiaries. The Trustee may utilize any or all of the Trust income or corpus and no precept of equality need apply.

In addition, each trust contains the same spendthrift provision. Article VIII-D of each trust provides that no beneficiary has any ascertainable proportionate, actuarial or otherwise, fixed or definable right to or interest in all or any portion of the Trust Fund.

Each trust provides that on the death of Settlor, A and B, Settlor's children, will become additional discretionary beneficiaries of Trust 1 and Trust 2.

Trustee has petitioned the district court of State to modify the trusts to include A and B as additional current discretionary beneficiaries. Other than the beneficiaries, each trust will contain the same provisions for the distribution of income and principal.

Section 61(a)(3) provides that gross income includes gain derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for cash or for other property differing materially either in kind or in extent is treated as income or loss sustained.

The addition of A and B as current discretionary beneficiaries increases the powers of the trustee to make discretionary distributions by enlarging the class of discretionary beneficiaries, but discretion is still solely in the hands of the independent trustee, and no beneficiary can compel a distribution. Under the circumstances, no discretionary beneficiary can be said to hold more than an expectancy in trust property, which is the equivalent of their status prior to the proposed trust modification.

Based on the information submitted and representations made we conclude that the modification of Trust 1 and Trust 2 will not result in the realization of gain or loss under §§ 61 and 1001 to Trust 1, Trust 2, A or B.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Michael J. Montemurro
Branch Chief
Income Tax & Accounting

Enclosure (1)

cc: